

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-656

ORVAL C. LOGUE, INDIVIDUALLY AND AS
PERSONAL REPRESENTATIVE OF
HIS DECEASED SON, REAGAN LOGUE,
AND ALICE MARIE BLOUIN, PETITIONERS

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

1. Reagan Logue hanged himself while confined in the Nueces County, Texas, jail pursuant to a federal bench warrant. Petitioners, his parents and personal representatives, brought this action under the Federal Tort Claims Act, 28 U.S.C. 2671, *et seq.*¹ to recover damages for the alleged negligence of the United States in improperly supervising his confinement. Pe-

¹ Although the action was also originally brought under the Texas Wrongful Death Act, Article 4671, *et seq.*, Revised Civil Statutes of Texas (1925), no claim under that Act is alleged here.

tioners prevailed in the district court, 334 F. Supp. 322 (Pet. App. A), but the court of appeals reversed, 459 F. 2d 408 (Pet. App. B), and denied a petition for rehearing, 463 F. 2d 1340 (Pet. App. C).

The court of appeals held that where, as here, a federal prisoner is housed in a non-federal facility which is a "contractor" under the Tort Claims Act, the United States—which, under the Act is liable only for torts of federal employees—is not liable for the negligent acts of the jail's non-federal employees. It further held that the Deputy United States Marshall, having no control over the internal operation of the jail, breached no duty to the deceased (Pet. App. B 34).

2. The narrow factual questions whether the Nueces County Jail was an independent contractor of the United States, whether the employees of the jail were federal or non-federal employees, and whether the United States Marshall breached his duty to the deceased, have been fully and correctly resolved adversely to petitioners in the court of appeals. The particular facts here distinguish this case from the others relied on by petitioners and there is no conflict of decisions.² Petitioners do not question the authority,

² As pointed out below, *Close v. United States*, 397 F. 2d 686 (C.A. D.C.), involving a federal prisoner in a District of Columbia jail, is distinguishable on two grounds: first, there was in *Close* no claim that the local jail was a contractor as defined in the Federal Tort Claims Act, and second, the court there concluded that the Attorney General had sufficient control over the District of Columbia jail to justify considering it a federal facility.

In the other case relied upon by petitioners, *Witt v. United States*, 462 F. 2d 1261 (C.A. 2), a military prisoner held in a fed-

granted by Congress in 18 U.S.C. 4002, of the Director of the Bureau of Prisons to contract with state and local prison officials. If, as petitioners allege, conditions in non-federal prison facilities are substandard, and the decision to utilize such facilities for the temporary incarceration of federal prisoners is unwise, this is a matter for Congressional resolution.

In sum, there is no occasion for further review here and the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

DECEMBER 1972.

eral disciplinary barracks was injured while being transported by a private contractor for whom he had worked pursuant to an agreement between the contractor and the barracks. The court held that the government had a responsibility for his safety while in the custody of the barracks which could not be avoided simply because the private contractor, rather than military personnel, transported him to and from his work. Similarly, here, the Nueces County jail had the responsibility for the general custody and care of the prisoner.

The instant case is not inconsistent with *United States v. Muniz*, 374 U.S. 150, which involved a prisoner in a federal facility, nor with the refusal in *Rayonier, Inc. v. United States*, 352 U.S. 315, 320, to "read exemptions into the [Tort Claims] Act beyond those provided by Congress," since the exemption of independent contractors was specifically directed by Congress in 28 U.S.C. 2671.